



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

**DECLARATION OF STEPHEN C. DURANT IN SUPPORT
OF PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL
APPLICATION**

Commissioner for Patents
Washington, D.C. 20231

Dear Sir or Madam:

I, Stephen Durant, declare that:

I am a partner with the law firm of Morrison & Foerster, LLP., having offices at 425 Market Street, San Francisco, CA 94105 (Morrison & Foerster). Morrison & Foerster is Applicant's legal representative in the above-captioned matter.

On December 22, 2000, I accepted an Express Mail envelope from Charmayne Wilson, my patent assistant, which was identified as containing the above-identified patent application. Also on December 22, 2000, I deposited this same envelope with the U.S. Postal Service. I witnessed the Postal Clerk weigh the envelope and complete the Express Mail Receipt noting the weight as 2 lbs. 9 ounces, copy attached as Exhibit 1. Also, on December 22, 2000, I witnessed the Postal Clerk weigh the Express Mail

envelope for U.S. Provisional Application Serial No. 60/258,112 Express Mail Receipt noting the weight as 2 lbs. 10 ounces, copy attached as Exhibit 2.

I am aware that Charmayne Wilson, my patent assistant, prepared a photocopy of the present patent application as filed and attached it to the center section of a tri-fold file folder marked with client identification information. I have reviewed the photocopy of the above-referenced patent application attached to the center section of a tri-fold file folder marked with client identifying information and retained by Morrison and Foerster. Prior to my review of the photocopy of the application for purposes of making this declaration, I did not handle in any way the tri-fold file folder or photocopy of the application attached thereto.

The photocopy of the specification of the patent application includes a specification on pages 1 to 143, with two pages labeled page 85, and a page of claims on the page labeled 143.

Charmayne Wilson, Donalyn Pryor and myself are the only people employed by Morrison & Foerster who were involved with the preparation and filing of the present application. I know of no reason why any other person employed by Morrison & Foerster would have handled the photocopy of the patent application in the tri-fold file folder.

I further declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404332000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

Respectfully submitted,

By: 

Stephen C. Durant
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